

**Illinois Health Facilities and Services Review Board  
Surgical Care Affiliates  
Physicians Surgery Center Belleville  
Project No.: E-11-14**

**Technical Assistance Meeting Agenda**

**July 21, 2014**

Conference Call No: (866) 396-0269 Code: 6155453477

1. Introductions

Courtney Avery, Administrator	Walker Badham, Director of Development SCA
Frank Urso, General Counsel	Joe Ourth, CON Legal Counsel
Mike Constantino, Supervisor	Karen Hall (by phone), SCA Assistant General Counsel
George Roate, Review Staff	Dorothy Pak, Outside Transaction Counsel for SCA

2. Brief Overview of Reason for Technical Assistance Meeting

- a. SCA Conversion from LLC to Corporation Compliance Inquiry
- b. Other SCA Ownership Structure Issues and Necessary Applicants
- c. Timing of Pending COE Application

3. Brief Overview of SCA and SCA in Illinois and Conversion / Going Public

4. Discussion of Whether LLC Conversion Constitutes Change of Person

(Brief memorandum regarding Delaware Law Attached)

5. Discussion of Co-Applicant Issues

6. Timing of Board Consideration of Physicians Surgery Center

7. Discussion of Any Other Issues Review Board wants to Discuss

8. Actions to be Taken

9. Summary of Technical Assistance Meeting for Compliance with Planning Act

10. Supplemental Materials / Handouts

- a. Courtney Avery Letter of July 2, 2014
- b. Legal Memo on LLC Conversion to Corporation
- c. SCA Organization Chart from Belleville Application
- d. List of SCA Affiliated Surgery Centers in Illinois
- e. Proskauer Rose LLP Letter to Review Board June 15, 2017 (w/o attachments)



STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

July 2, 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Walker P. Badham  
Surgical Care Affiliates, LLC.  
3000 Riverchase Galleria, Suite 500  
Birmingham, Alabama 35244

Re: Surgical Care Affiliates, LLC

Dear Mr. Badham:

We are reviewing the change of ownership of Physicians' Surgical Center in Belleville, Illinois (E-011-14). As part of that review we noted the following language in the audited financial statement for Surgical Care Affiliates, Inc.

*"Surgical Care Affiliates, Inc., a Delaware corporation, was converted from a Delaware limited liability company, previously named ASC Acquisition LLC, to a Delaware corporation on October 30, 2013. Pursuant to the conversion, every 10.25 outstanding membership units of ASC Acquisition LLC were converted into one share of common stock of Surgical Care Affiliates, and options to purchase membership units of ASC Acquisition LLC were converted into options to purchase shares of common stock of Surgical Care Affiliates at a ratio of 10.25 membership units of ASC Acquisition LLC underlying such options to each one share of common stock of Surgical Care Affiliates underlying such converted options. In connection with the conversion, the exercise prices of such converted options were adjusted accordingly. Upon conversion, all outstanding restricted stock units of ASC Acquisition LLC were converted into one restricted share of Surgical Care Affiliates. All share and per share amounts have been adjusted to reflect these conversion amounts throughout these financial statements."*

From the language above it appears that a change of ownership has occurred without the approval of the Illinois Health Facilities and Services Review Board. If this is the case you could be subject to fines and penalties as outlined in the Health Facilities Planning Act. (20 ILCS 3960)

Please contact Mike Constantino or George Roate at 217.782.3516 or [mike.constantino@illinois.gov](mailto:mike.constantino@illinois.gov) or [george.roate@illinois.gov](mailto:george.roate@illinois.gov) by July 15<sup>th</sup> to discuss this matter.

Sincerely,

Courtney Avery, Administrator  
Illinois Health Facilities and Services Review Board

cc: Kathy Olson, Chairman

# ARNSTEIN & LEHR LLP

*Serving clients for more than 120 years.*

**TO:** Courtney Avery  
Frank Urso  
Mike Constantino  
George Roate

**FROM:** Joe Ourth  
Karen Harris

**RE:** Surgical Care Affiliates, Inc. – Conversion from Delaware LLC to corporation

**DATE:** July 21, 2014

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## **I. Factual Overview**

Surgical Care Affiliates, Inc. (“SCA”) co-owns surgical centers with physicians and other providers and performs management services for centers throughout the U.S., including five centers in Illinois. SCA is a publicly-traded Delaware corporation. SCA affiliated centers in Illinois are each licensed separately in the name of the local joint ownership entity. SCA is not the licensed entity for any Illinois facility.

Applicants, including SCA, had filed an exemption application in June 2014 in which one SCA affiliated center would effect a change of ownership of Physicians Surgical Center in Belleville. In reviewing the application, Board staff noted that the audited financial statements reported that SCA had recently converted from a Delaware LLC to a Delaware corporation. By letter dated July 2, 2014, staff noted this change and asked that the applicant contact the Board upon this type conversion staff to discuss this conversion.

As the Board staff’s July 2 letter correctly noted, on October 30, 2013 SCA converted from a Delaware LLC to a Delaware corporation. As discussed below, SCA did not file for a COE in Illinois or in any other state in connection with that conversion. Prior to this conversion, however, SCA reviewed the applicable laws, particularly Delaware law that specifically provides that the new corporation remains the same entity. This memorandum provides background in advance of the July 21, 2014 technical assistance meeting as to SCA’s interpretation as to why this conversion should not constitute a change of ownership.

The primary question here is whether conversion from a Delaware LLC to a Delaware corporation is a change in the “person” who has control of the licensed facility. Delaware law specifically answers this question that there is no change in the entity. As explained in this memorandum, we believe there is no change in the person and thus no COE should be required.

## **II. Review Board Definition of Change of Ownership.**

The Planning Act defines a change of ownership as a “change in the person who has ownership or control of a health care facility’s physical plant and capital assets” and is indicated by a sale, transfer, acquisition, lease, or change of sponsorship or other means of transferring control.<sup>1</sup> Additionally, Review Board regulations provide examples such as stating that the issuance of a license by Illinois Department of Public Health (“IDPH”) to a person different from the current licensee is an example of a change of ownership.<sup>2</sup>

Under governing Delaware law, after its LLC conversion, SCA remains the same entity. Consequently, SCA believed then and continues to believe now that there was no change in the “person” who had ownership or control of the facility. Also was there was no change in the reason who was the licensed entity.

## **III. Statutory Conversion from an LLC to a C Corporation.**

Because SCA is incorporated in Delaware, Delaware corporate law governs its existence. Illinois law provides that for purposes of corporate governance the law of the state of incorporation governs. *Kellers Sys., Inc. v. Transp. Int'l Pool, Inc.*, 172 F. Supp. 2d 992, 1000 (N.D. Ill. 2001); *Heyman v. Beatrice Co.*, 1995 WL 151872 at \*6 (N.D. Ill. 1995). Delaware law states “When another entity has been converted to a corporation of this State pursuant to this section, the corporation of the State shall for all purposes of the State of Delaware, be deemed to be the same entity as the converting other entity.”<sup>3</sup> See *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1015 (Del. Ch. 2007). Additionally, the corporation’s existence is deemed to have commenced on the date that the LLC was incorporated.<sup>4</sup> Thus, under Delaware law the conversion did not constitute a change in the corporate entity.

Similar to Delaware law, Illinois’ Limited Liability Company Act (“LLC Act”)<sup>5</sup> permits a partnership or limited partnership to convert to an LLC and the LLC is treated the same entity which existed before the conversion.<sup>6</sup> Illinois’ LLC Act is silent, however, regarding similar provisions in which an Illinois LLC converting to a C corporation. Because SCA is a Delaware corporation, however, the Illinois LLC does not govern this question.

## **Conclusion**

Delaware law authorizes SCA to convert from an LLC to a corporation and provides that when it does so it remains the same legal entity. Consequently, when SCA converted it remained the same “person” and there was no change that should require a COE.

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<sup>1</sup> 20 ILCS 3960/3. (emphasis added)

<sup>2</sup> 77 Ill. Adm. Code §1130.140.

<sup>3</sup> 8 Del. C. §265(f).

<sup>4</sup> 8 Del. C. §265(d).

<sup>5</sup> 805 ILCS 180 et. seq.

<sup>6</sup> 805 ILCS 180 et. seq.

West's Delaware Code Annotated

Title 8. Corporations

Chapter 1. General Corporation Law

Subchapter IX. Merger, Consolidation or Conversion

8 Del.C. § 265

§ 265. Conversion of other entities to a domestic corporation

Effective: August 1, 2012

Currentness

(a) As used in this section, the term “other entity” means a limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust or any other unincorporated business including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a foreign corporation.

(b) Any other entity may convert to a corporation of this State by complying with subsection (h) of this section and filing in the office of the Secretary of State:

(1) A certificate of conversion to corporation that has been executed in accordance with subsection (i) of this section and filed in accordance with § 103 of this title; and

(2) A certificate of incorporation that has been executed, acknowledged and filed in accordance with § 103 of this title.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 103(d) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 103(d) of this title.

(c) The certificate of conversion to corporation shall state:

(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic corporation;

(2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to corporation; and

(3) The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection (b) of this section.

(4) Repealed by 75 L.2005, ch. 30, § 11, eff. Aug. 1, 2005.

✓ (d) Upon the effective time of the certificate of conversion to corporation and the certificate of incorporation, the other entity shall be converted to a corporation of this State and the corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding § 106 of this title, the existence of the corporation shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity to a corporation of this State shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a corporation of this State or the personal liability of any person incurred prior to such conversion.

(f) When an other entity has been converted to a corporation of this State pursuant to this section, the corporation of this State shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the converting other entity. When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic corporation to which such other entity has converted and shall be the property of such domestic corporation and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the corporation of this State to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a corporation of this State. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic corporation to which such other entity has converted for any purpose of the laws of the State of Delaware.

(g) Unless otherwise agreed for all purposes of the laws of the State of Delaware or as required under applicable non-Delaware law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a corporation of this State.

(h) Prior to filing a certificate of conversion to corporation with the office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

(i) The certificate of conversion to corporation shall be signed by any person who is authorized to sign the certificate of conversion to corporation on behalf of the other entity.

(j) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a corporation of this State may be exchanged for or converted into cash, property, or shares of stock, rights or securities of such corporation of this State or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or shares of stock, rights or securities of or interests in another domestic corporation or other entity or may be cancelled.

#### Credits

72 Laws 1999, ch. 123, § 10, eff. July 1, 1999; 73 Laws 2001, ch. 82, §§ 27 to 29, eff. July 1, 2001; 73 Laws 2002, ch. 329, § 45, eff. Sept. 1, 2002; 75 Laws 2005, ch. 30, §§ 4 to 18, eff. Aug. 1, 2005; 78 Laws 2011, ch. 96, § 7, eff. Aug. 1, 2011; 78 Laws 2012, ch. 273, § 3, eff. Aug. 1, 2012.

#### Notes of Decisions (2)

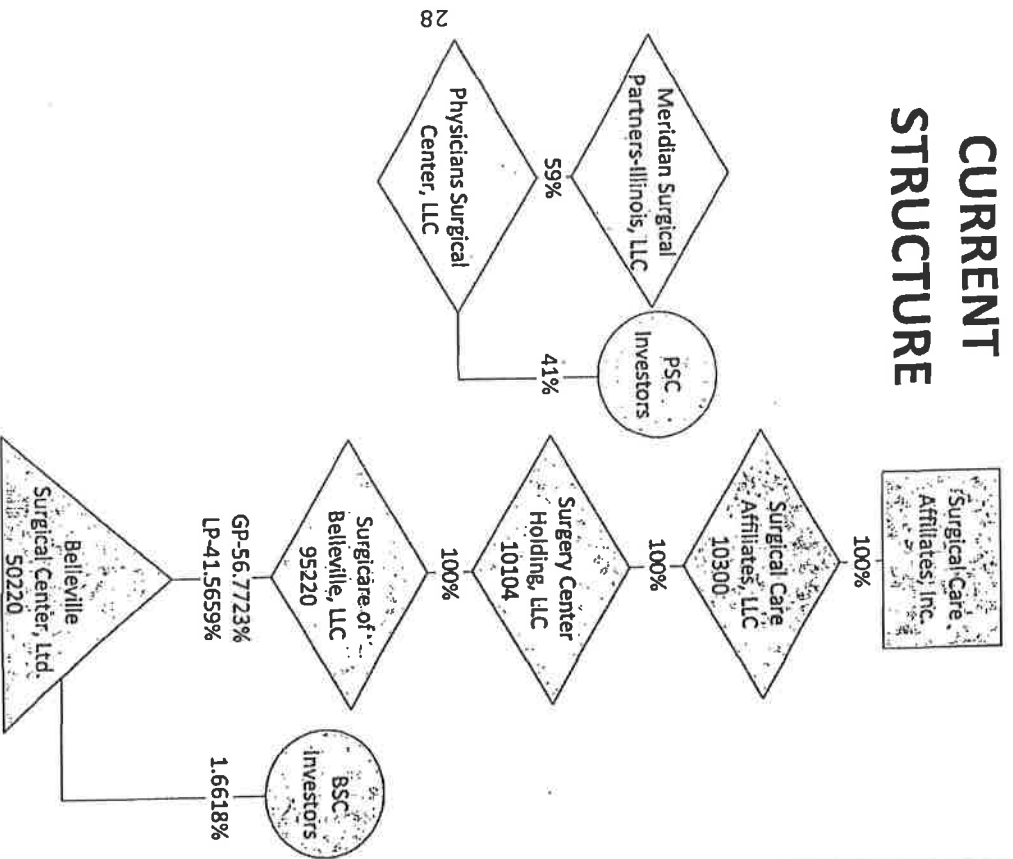
8 Del.C. § 265, DE ST TI 8 § 265

Current through 79 Laws 2014, ch. 294, excepting ch. 290. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

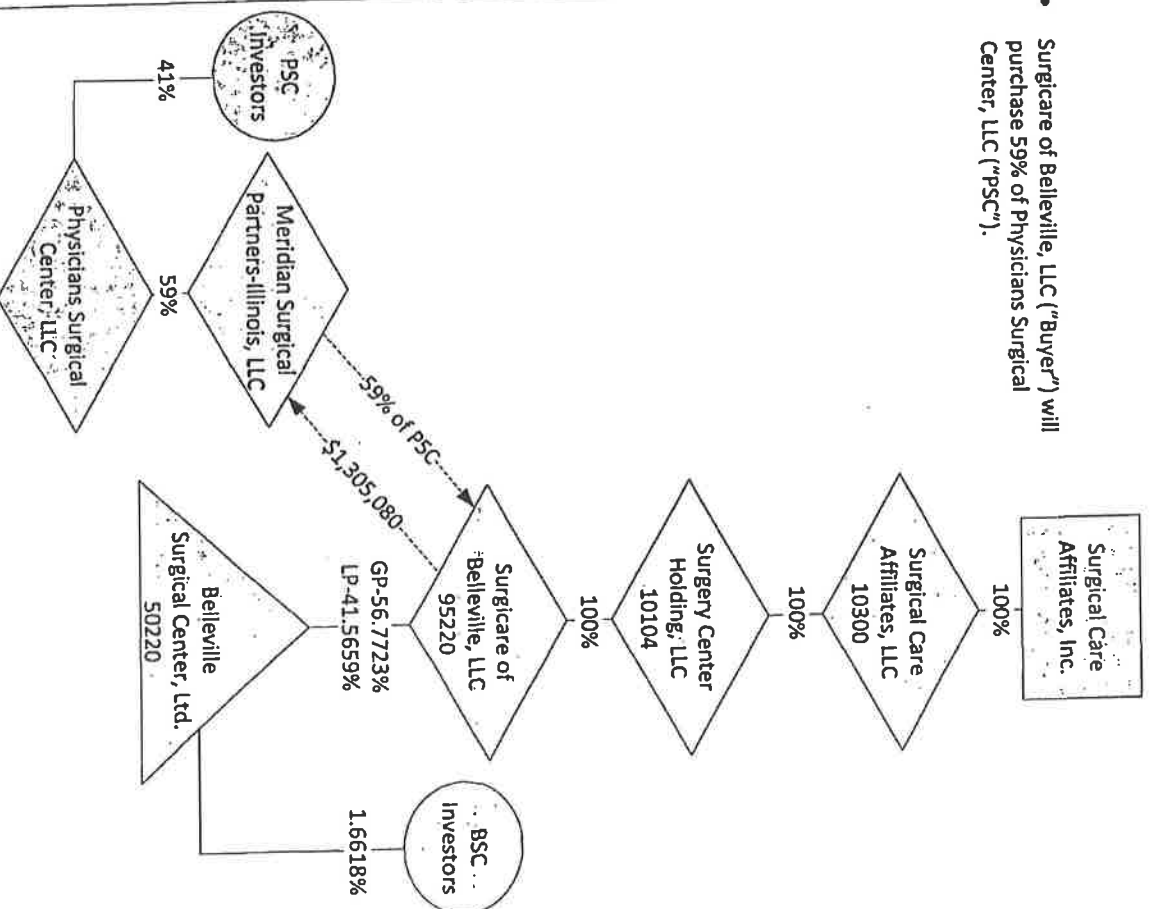
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# CURRENT STRUCTURE



- Surgicare of Belleville, LLC ("Buyer") will purchase 59% of Physicians Surgical Center, LLC ("PSC").

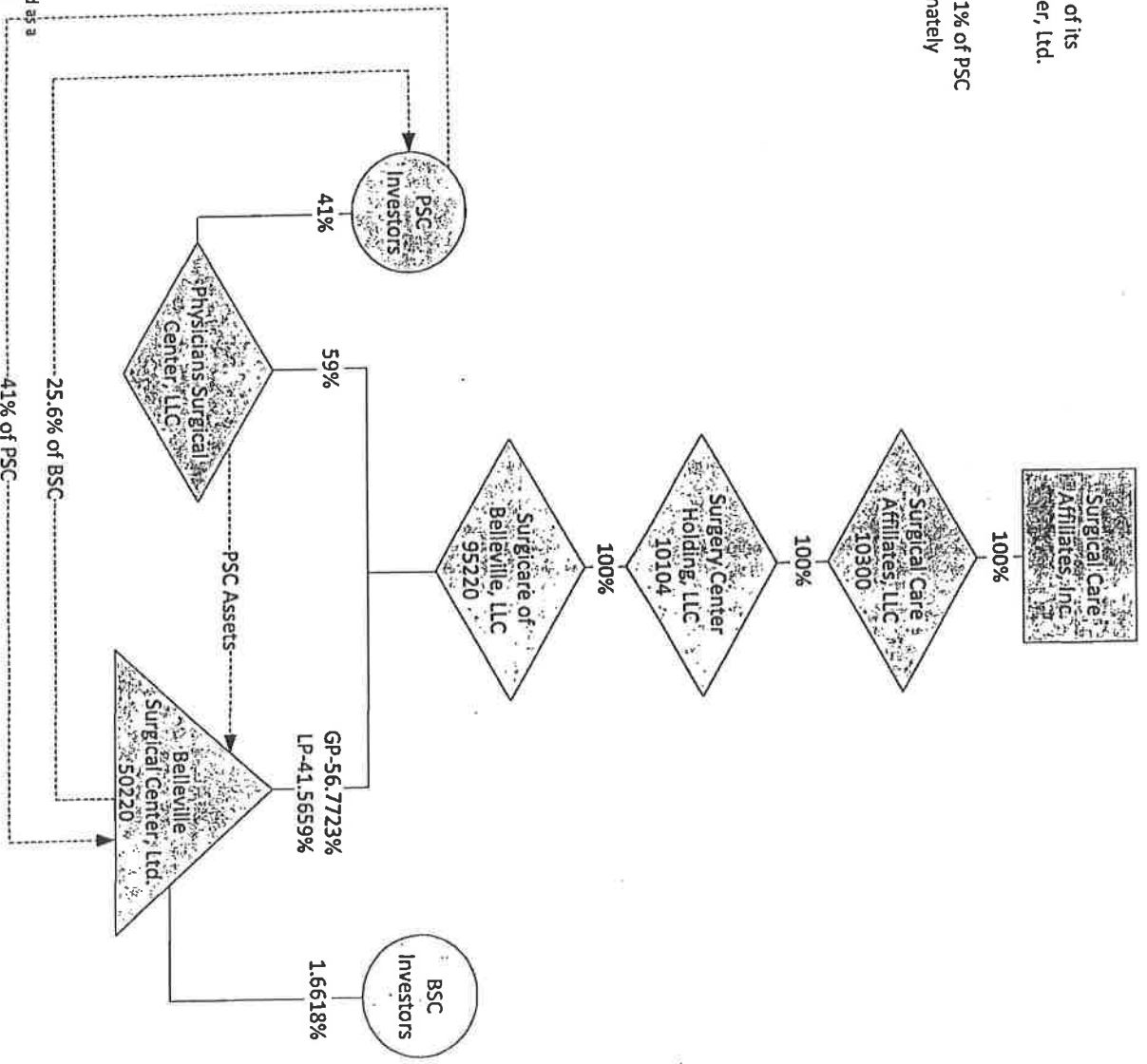


Disclaimer: This information is provided as a summary only and does not contain all transaction details. For complete details, please review the FINAL transaction documents.



Physicians Surgical Center, LLC - 311 West Lincoln, Suite 300, Belleville, IL 62220 ("PSC location")  
 Belleville Surgical Center, Ltd. - 28 North 64<sup>th</sup> Street, Belleville, IL 62223 ("BSC location")

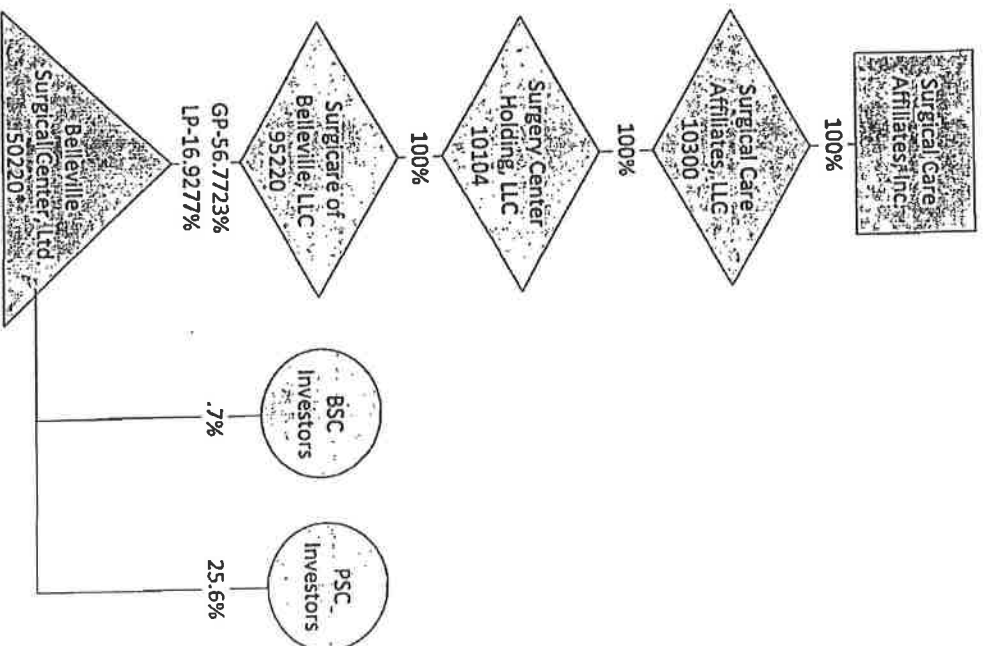
- PSC contributes substantially all of its assets to Belleville Surgical Center, Ltd. ("BSC")
- PSC Investors contribute their 41% of PSC to BSC in exchange for approximately 25.6% of BSC



Disclaimer: This information is provided as a summary only and does not contain all transaction details. For complete details, please review the FINAL transaction documents.

Physicians Surgical Center, LLC - 311 West Lincoln, Suite 300, Belleville, IL 62220 ("PSC Location")  
Belleville Surgical Center, Ltd. - 28 North 64<sup>th</sup> Street, Belleville, IL 62223 ("BSC Location")

## POST-CLOSING STRUCTURE



\*The BSC partnership will operate the BSC Location and the PSC Location.

Disclaimer: This information is provided as a summary only and does not contain all transaction details. For complete details, please review the FINAL transaction documents.

**Illinois Ambulatory Surgical Treatment Centers  
SCA Affiliated Facilities**

1. Loyola Ambulatory Surgery Center at Oakbrook, L.P.
2. Belleville Surgical Center Limited
3. Hawthorne Place Outpatient Surgery Center, L.P.
4. Northwest Surgicare, LTD
5. Amsurg Surgery Center

## PROSKAUER ROSE LLP

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**Julia McMillen**  
Admitted in the District of Columbia and  
Missouri

Direct Dial 212.969.3793  
jmcmlen@proskauer.com

June 15, 2007

### Via Overnight Delivery

Jeffrey Mark  
Executive Secretary  
Illinois Health Facilities Planning Board  
525 West Jefferson Street  
Second Floor  
Springfield, IL 62761

Jeffrey Mark  
Executive Secretary  
Illinois Health Facilities Planning Board  
100 West Randolph  
Suite 6-600  
Chicago, IL 60601

Re: Request for Technical Advice in connection with Change of Ownership Exemption for HealthSouth Corporation's Sale of Ambulatory Surgery Division

Dear Mr. Mark:

The purpose of this letter is to seek your technical assistance regarding six applications for change of ownership exemption to be filed with the Illinois Health Facilities Planning Board (the "Planning Board") related to six letters of intent for exemptions dated April 11, 2007 for the following facilities:

1. Hawthorn Place Outpatient Surgery Center, L.P.
2. Joliet Surgery Center Limited Partnership
3. Loyola Ambulatory Surgery Center at Oakbrook, L.P.
4. Marion Surgery Center, LTD
5. Northwest Surgicare, LTD
6. Belleville Surgical Center Limited

The change of ownership exemption is sought in connection with a publicly-announced sale by HealthSouth Corporation of its Ambulatory Surgery Division to ASC Acquisition LLC pursuant to a Stock Purchase Agreement dated as of March 25, 2007.

## PROSKAUER ROSE LLP

Jeffrey Mark  
June 15, 2007  
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By way of background, HealthSouth's Ambulatory Surgery Division consists of 137 outpatient surgery centers and three (3) surgical hospitals in 35 states. Currently, the assets of the Ambulatory Surgery Division are held directly and indirectly by eight subsidiaries that are directly owned and controlled by HealthSouth Corporation. Virtually simultaneously with closing the transaction, HealthSouth Corporation is transferring the existing eight subsidiaries to Surgical Care Affiliates, LLC fka Surgery Holdings, LLC, an entity formed for purposes of this transaction that is directly owned and controlled by HealthSouth Corporation. Upon the closing of the transaction, HealthSouth Corporation will sell to ASC Acquisition LLC 100% of the stock of Surgical Care Affiliates, LLC. In addition, in connection with the transaction, HealthSouth also is converting – for tax purposes – a number of its Ambulatory Surgery Division subsidiaries from corporations to limited liability companies.

Thus, upon the closing of the transaction, control of Surgical Care Affiliates, LLC will pass from HealthSouth Corporation to ASC Acquisition LLC. Thereafter, Surgical Care Affiliates, LLC will operate the Ambulatory Surgery Division as a stand-alone company. The closing of the transaction is expected to occur June 29, 2007.

Because Planning Board approvals applicable to the Illinois facilities are not expected to be obtained by June 29, 2007, and in order to allow the transaction involving the other outpatient surgery centers and surgical hospitals outside of Illinois to close as scheduled, prior to the closing of the transaction, HealthSouth will cause the stock of the general partner of each Illinois facility to be held directly by HealthSouth Corporation, which is not being sold and which will continue in existence following the closing of the transaction. Under the Planning Board's definition of "control", HealthSouth Corporation currently has final control of the Illinois facilities and their respective general partners, in that HealthSouth Corporation directly owns and controls the subsidiaries that own and control the general partners of the facilities. By holding the stock of the facility's general partner directly, there will be no change in HealthSouth Corporation's control of either the facility or its general partner. Upon receipt of the Planning Board approvals, HealthSouth will convey its interest in each facility's general partner to a subsidiary of ASC Acquisition LLC.

For your reference, attached as Exhibit A are the current and proposed organizational charts for each of the six facilities, and attached as Exhibit B is a pro forma application for exemption for the change of ownership of Hawthorn Place Outpatient Surgery Center, L.P. (the "pro forma application"), one of the six facilities. A more detailed description of the transaction is found at Attachment #3 to the pro forma application (pages 10 to 13). And you will find at Attachment #5B (page 122) the agreement of the parties making transfer of HealthSouth Corporation's ownership interest in the Illinois facilities to ASC Acquisition LLC subject to the Planning Board's issuance of an exemption.

## PROSKAUER ROSE LLP

Jeffrey Mark  
June 15, 2007  
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Since each of the six applications is based upon the same underlying transaction, and in order ensure that the applications respond to the Planning Board's technical requirements at the time that they are filed, we appreciate your consideration of our request for technical assistance. Our specific questions are as follows:

### 1. Identifying the Correct Co-Applicants

We request confirmation that we have identified the correct co-applicants for the applications. As you will see from the pro forma application, we have identified two co-applicants: (1) ASC Acquisition LLC, the purchaser under the Stock Purchase Agreement, and (2) Hawthorn Place Outpatient Surgery Center, L.P., the licensed entity operating the facility. We propose to use ASC Acquisition LLC and the licensed operating entity as the co-applicants for each of the six exemption applications.

ASC Acquisition LLC is a new company formed for the purposes of this transaction. The sole member of ASC Acquisition LLC at this time is TPG Partners V, L.P., a private investment fund composed of over 270 investors, none of which have an ownership interest of greater than 6.61%. There may be certain minority investments by professionals involved in the transaction or other investment funds upon the closing the transaction, but none is expected to exceed 10% of ownership and TPG Partners V, L.P. will retain a majority interest in ASC Acquisition LLC.

Following the closing of the transaction, the Ambulatory Surgery Division will be operated by Surgical Care Affiliates, LLC and its subsidiaries, which ASC Acquisition LLC is acquiring from HealthSouth.

Surgical Care Affiliates, LLC has an experienced management team that has an in-depth knowledge of the industry and regulatory environment as well as the portfolio of facilities being acquired. Mike Snow, Joe Clark, Brian Pope and Marc Goff currently serve in senior management positions with HealthSouth and will remain in senior management positions with Surgical Care Affiliates, LLC following the transaction. In addition, in May and June 2007, HealthSouth added Chip Wann and Richard Sharff, who also will remain in senior management positions with Surgical Care Affiliates, LLC following the transaction. ASC Acquisition LLC believes maintenance of these experienced individuals within senior management of the Ambulatory Surgery Division will serve to further the goal of continued quality care for Illinois residents.

Following is a list of those individuals expected to serve as executive officers of Surgical Care Affiliates, LLC following the closing:

- Michael D. Snow, Chief Executive Officer
- Joseph T. Clark, Executive Vice President and Chief Operation Officer

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- William L. Wann, Jr. (Chip), Executive Vice President and Chief Financial Officer
- Brian Pope, Executive Vice President of Operations
- Richard L. Sharff, General Counsel
- Marconia Goff, Senior Vice President of Operations

ASC Acquisition LLC will not operate the Ambulatory Surgery Division following the closing. However, ASC Acquisition LLC will remain the sole member of Surgical Care Affiliates, LLC. For this reason, we identified ASC Acquisition LLC as the applicant with ultimate (albeit indirect) control over the facilities. Further, ASC Acquisition LLC is the party to the Stock Purchase Agreement with HealthSouth Corporation. It also is the entity that has secured from Goldman Sachs Credit Partners and J.P. Morgan Securities Inc. committed debt financing for this transaction and a commitment for a revolving line of credit for operating and other general business purposes.

Again, we would appreciate it if you would confirm that we have identified the correct co-applicants for the applications.

### 2. Providing the Correct Financial Information

With respect to demonstrating that applicant ASC Acquisition LLC has sufficient funds to finance the acquisition, we have provided at Attachment #6 to the pro forma application the source of funds for the transaction (page 144) as well as a copy of the financing commitment letter to ASC Acquisition LLC (pages 145 to 158). We propose to provide this information for each of the six exemption applications.

With respect to demonstrating the ability to operate the facility for 36 months, and because the licensed operating entity does not have a bond rating from a recognized rating agency, we have provided at Attachment #6 evidence of compliance with the financial viability review criteria as specified at 77 IAC 1120 (page 159). We propose to provide similar information, as applicable to each facility, for each of the six exemption applications.

We would appreciate it if you would confirm that we have provided the correct financial information for the applications.

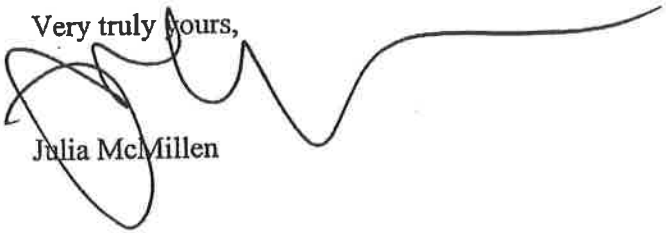
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**PROSKAUER ROSE LLP**

Jeffrey Mark  
June 15, 2007  
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We appreciate your review of the pro forma application and appreciate any feedback you have on our specific questions, as well as any other areas that you believe require clarification. We will contact you to set up a time to discuss, but please do not hesitate to contact us if you would like immediate clarification.

Very truly yours,



Julia McMillen

Enclosures

cc: Thomas C. Shields  
Frank W. Urso